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91ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 91-975

BANK RECORDS AND FOREIGN TRANSACTIONS

MARCH 28, 1970.—Committed to the Committee of the whole House on the State of the Union, and ordered to be printed

Mr. PATMAN, from the Committee on Banking and Currency, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 15073]

The Committee on Banking and Currency, to whom was referred the bill (H.R. 15073) to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

COMMITTEE AMENDMENTS

The committee amendments are set forth below. Since in some cases a single committee amendment changes words appearing in more than one place in the same section, each committee amendment is separated from the one which follows it by a dash beginning at the left hand margin. Page and line numbers refer to the reported bill.

Page 1, strike line 3 and insert:
TITLE I—FINANCIAL RECORDKEEPING

Page 1, in the table of chapters after line 4:
After "INSURED BANKS" insert:
AND INSURED INSTITUTIONS
Strike "UNINSURED BANKS" and insert:
OTHER FINANCIAL INSTITUTIONS

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Page 2, line 1, after "CHAPTER 1—INSURED BANKS" insert: AND INSURED INSTITUTIONS

Page 2, after line 2, at the end of the table of sections, insert: 102. Retention of records by insured institutions.

Page 2, strike lines 8 through 13 and insert in lieu thereof the following:

"SEC. 21. (a)(1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that photocopies made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

"(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Page 3, lines 4 and 5, strike "such" and "as he may deem appropriate".

Page 3, line 8, strike "may" and insert:
shall

Page 3, line 12, strike "in accordance with".

Page 3, line 13, immediately before "the regulations of the Secretary" insert:
to the extent that

Page 3, line 13, immediately after "the regulations of the Secretary" insert:
so require

Page 3, line 20, immediately after "is to be deposited or collected" insert:
, unless the bank has already made a record of the party's identity pursuant to subsection (c)

Page 4, line 1, immediately after "required to be reported" insert:
or recorded

Page 4, line 8, strike "additional".

Page 4, line 10, strike "other".

Page 4, line 12, strike the closing quotation marks.

Page 4, immediately after line 12, insert the following:

"(h) The Secretary shall make an annual report to the Congress of his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

Page 4, immediately after line 17, insert the following:

"(i) Notwithstanding any other provisions of this section the recordkeeping requirements referred to in this section shall not apply to domestic financial transactions involving less than $500."

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Page 4, after line 21, insert the following:

Sec. 102. Retention of records by insured institutions

Title IV of the National Housing Act is amended by adding at the end thereof the following new section:

"SEC. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks."

Page 5, strike line 5 and insert:

CHAPTER 2—OTHER FINANCIAL INSTITUTIONS

Page 5, in the table of sections after line 6:

After "Congressional findings" insert:

and purpose

Strike "Authority of Secretary" and insert:

Ownership and control

Insert below "122. Ownership and control." the following:

123. Maintenance of records and evidence.

After "123. Maintenance of records and evidence.", change "123" to "124", "124" to "125", "125" to "126", and "126" to "127".

Page 5, line 7, after "Congressional findings" insert:

and purpose

Page 5, strike line 8 and all that follows through page 6, line 4, and insert:

(a) The Congress finds that adequate records maintained by businesses engaged in the functions described in section 123(b) of this Act have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and management of types of financial institutions referred to in section 122 of this Act may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses where such records or reports may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Page 6, line 18, strike "Authority of Secretary" and insert:

Ownership and control

Page 6, strike lines 20 through 23 and insert:

uninsured bank or uninsured institution to make such reports as the Secretary may require in respect of its ownership, control, and management and any changes therein.

Page 7, beginning with line 1, insert the following:

Sec. 123. Maintenance of records and evidence

(a) The Secretary may by regulation require any uninsured bank or uninsured institution or any person engaging in the business of carrying on any of the functions referred to in subsection (b) of this section

Page 7, line 6, strike "(2) To" and insert:

(1) to

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Page 7, line 6, after "(1) to require, retain, or maintain," insert: with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b),

Page 7, line 9, strike "other".

Page 7, strike lines 13 through 15.

Page 7, line 16, strike "(4) To" and insert:
(2) to

Page 7, after line 22, insert:

(b) The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

(1) Issuing travelers' checks.

(2) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments otherwise than as an incident to the conduct of its own nonfinancial business.

(3) Transferring or transmitting funds or credits domestically or internationally.

(4) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

(5) Operating a credit card system.

(6) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations.

Page 8, line 14, redesignate section 123 as section 124.

Page 9, line 3, redesignate section 124 as section 125.

Page 9, line 5, immediately after "may assess upon any" insert:
financial

Page 9, line 14, redesignate section 125 as section 126.

Page 9, line 18, redesignate section 126 as section 127.

Page 9, line 20, insert a comma after "chapter", and strike "or".

Page 9, line 21, insert at the beginning of the line:
or section 411 of the National Housing Act,

Page 9, line 22, after "tion is" insert:
knowingly

Page 10, after line 2, in the table of chapters:

After "3." strike "DISCLOSURE" and insert:
REPORTS

Strike "CURRENCY AND COIN" and insert:
MONETARY INSTRUMENTS

After "4." strike "DISCLOSURE OF CERTAIN".

Page 11, strike lines 3 through 6 and insert:

(c) The term "person" includes natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities. The term also includes any governmental department or agency specified by the Secretary either for the purpose of this title generally or any particular requirement thereunder.

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Page 11, after line 12, insert:

(d) The term "United States", used in a geographical sense, includes the States and the District of Columbia, and to the extent the Secretary shall by regulation specify, either for the purposes of this title generally or any particular requirement thereunder, the Commonwealth of Puerto Rico, the possessions of the United States, United States military establishments, and United States diplomatic establishments.

Page 11, line 25, after "a commercial bank" insert:

or trust company

Page 12, line 2, strike "a trust company" and insert:

a branch within the United States of any foreign bank

Page 12, at the beginning of line 7, insert:

credit union,

Page 12, strike lines 14 and 15 and insert:

(11) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments.

(12) an operator of a credit card system.

(13) an insurance company.

(14) a dealer in precious metals, stones, or jewels.

(15) a pawnbroker.

(16) a finance or loan company.

(17) any other type of business or institution performing similar, related, or substitute functions specified by the Secretary by regulation for the purposes of the provision of this title to which the regulation relates.

Page 13, strike lines 1 through 3.

Page 13, line 4, redesignate subsection (g) as subsection (f).

Page 13, strike lines 12 through 14 and insert:

(g) The term "domestic", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to such institutions or agencies to the extent that they perform any functions as such within the United States.

(h) The term "foreign", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to such institutions or agencies to the extent that they perform any functions as such outside the United States.

Page 14, after line 10, insert:

(m) The term "monetary instruments" means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of checks, bills, notes, bonds, stock transferable by delivery, or other obligations or instruments as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.

Page 15, strike lines 6 through 9 and insert:

The Secretary may make such exemptions from any requirement otherwise imposed under this title as he may deem appropriate. Any such exemption may be conditional or unconditional, by regulation,

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order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount (whether or not an amount is specified in this title) of the transaction, to the party or parties or the classification of parties, or to any combination thereof. The Secretary may in his discretion, in any manner giving actual or constructive notice to the parties affected, revoke any exemption made under this section. Any such revocation shall remain in effect pending any judicial review.

Page 17, line 2, after "where the violation is" insert:
knowingly

Page 18, line 11, strike "Every transaction" and insert:
Transactions

Page 18, line 14, strike "the transaction involves" and insert:
they involve

Page 18, line 15, after "United States currency," insert:
or such other monetary instruments as the Secretary may specify,

Page 18, line 20, strike "Any" and insert:
The report of any

Page 18, line 21, strike "reported" and insert:
signed or otherwise made

Page 19, line 15, insert a comma after "Act" and strike "or".

Page 19, line 16, immediately after "Deposit Insurance Act" insert:
, or section 411 of the National Housing Act

Page 20, line 3, strike "DISCLOSURE" and insert:
REPORTS

Page 20, line 4, strike "CURRENCY AND COIN" and insert:
MONETARY INSTRUMENTS

Page 20, lines 10 and 11, strike "currency or coin of the United States" and insert:
monetary instruments

Page 20, lines 20 and 21, strike "currency or coin of the United States" and insert:
monetary instruments

Page 20, line 21, strike "its" and insert:
their

Page 21, lines 12 and 13, strike "currency or coin" and insert:
monetary instruments

Page 21, lines 16 and 17, strike "currency or coin is" and insert:
monetary instruments are

Page 21, lines 21 and 22, strike "currency or coin is" and insert:
monetary instruments are

Page 21, line 22, strike "it is" and insert:
they are

Page 21, lines 24 and 25, strike "currency and coin" and insert:
monetary instruments

Page 22, lines 2 and 3, strike "coin or currency" and insert:
monetary instruments

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Page 22, lines 4 and 5, strike "coin or currency" and insert:
monetary instruments

Page 20, lines 12 and 13, strike "subject to the jurisdiction of" and insert:
within

Page 20, line 14, strike "not subject to the jurisdiction of" and insert:
outside

Page 20, lines 16 and 17, strike "subject to the jurisdiction of" and insert:
within

Page 20, line 18, strike "not subject to the jurisdiction of" and insert:
outside

Page 20, line 22, strike "any place subject to the jurisdiction of".

Page 21, lines 1 and 2, strike "not subject to the jurisdiction of" and insert:
outside

Page 22, line 8, strike "coin or currency" and insert:
monetary instruments

Page 22, line 9, strike "is" and insert:
are

Page 22, line 12, strike "is" and insert:
are

Page 22, lines 14 and 15, strike "coin or currency" and insert:
monetary instruments

Page 22, line 16, strike "is" and insert:
are

Page 22, line 17, strike "it is" and insert:
they are

Page 22, line 19, strike "it is" and insert:
they are

Page 23, line 4, strike "coin and currency" and insert:
monetary instruments

Page 23, strike line 14 and all that follows through page 25, line 4 and insert:

CHAPTER 4.—FOREIGN TRANSACTIONS

Sec.
241. Records and reports required.
242. Classification and requirements.

Sec. 241. Records and reports required

The Secretary of the Treasury shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

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(2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

Sec. 242. Classification and requirements

With respect to any requirement imposed under this chapter, the Secretary may prescribe

(1) any reasonable classification of persons subject thereto or exempt therefrom.

(2) the foreign country or countries as to which any requirement applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) the form, frequency, and manner of filing of any required reports.

(4) types of transactions or relationships subject to or exempt from any such requirement.

(5) the magnitude of transactions or values involved in any relationship subject to any such requirement.

(6) such other matters as he may deem necessary to the application of this chapter.

Page 26, after line 19, insert:

TITLE III—MARGIN REQUIREMENTS

Sec. 301. Amendment of section 7(a) of the Securities Exchange Act of 1934

(a) Section 7(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(a)) is amended by striking the first sentence and inserting in lieu thereof the following: "For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall from time to time prescribe rules and regulations in accordance with this section. The Board shall prescribe rules and regulations with respect to the amount of credit (regardless of who or where the lender may be) that any person may initially obtain and subsequently retain on any security (other than an exempted security). The Board shall prescribe rules and regulations with respect to the amount of credit (regardless of who or where the borrower may be) that any person may initially extend and subsequently maintain on any security (other than an exempted security). It shall be unlawful for any person to obtain or retain credit in willful and knowing violation of any rule or regulation under this section. It shall be unlawful for any person to obtain or retain credit in violation, whether or not willful or knowing, of any rule or regulation under this section either on the basis of a material misrepresentation made or participated in by him of the purpose for which the credit is to be used, or in an aggregate amount exceeding $1,000,000 at any one time."

(b) The amendment made by subsection (a) of this section does not affect the continuing validity of any rule or regulation under section 7

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of the Securities Exchange Act of 1934 in effect prior to the effective date of the amendment.

Page 28, beginning on line 1, insert:

TITLE IV—EFFECTIVE DATES

Sec. 401. Effective dates

(a) Except as otherwise provided in this section, this Act and the amendments made thereby take effect on the first day of the seventh calendar month which begins after the date of enactment.

(b) The Secretary of the Treasury may by regulation provide that any provision of title I or II or any amendment made thereby shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment.

(c) The Board of Governors of the Federal Reserve System may by regulation provide that the amendment made by title III shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment.

[End of Committee Amendments]

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NEED FOR THE LEGISLATION

General Description of the Bill

The bill deals with two major problem areas in law enforcement. The first is that of financial recordkeeping by domestic banks and certain other domestic financial institutions. The second is the use by American residents of foreign financial facilities located in jurisdictions with various types of secrecy laws.

The bill contains three substantive titles. Title I requires the Secretary of the Treasury to prescribe regulations whereby insured banks, insured institutions, and other financial institutions must maintain appropriate types of records which have, or may have, a high degree of usefulness in criminal, tax or regulatory investigations or proceedings. Title II provides for records and reports of domestic currency transactions, exports and imports of monetary instruments and records and reports of foreign transactions by residents or citizens of the United States or persons doing business therein. Title III amends Section 7(a) of the Securities and Exchange Act of 1934, to make it unlawful for persons to obtain or retain credit in violation of rules or regulations issued pursuant to that Section.

Financial Recordkeeping

During the last decade, law enforcement agencies have found that the increasing growth of our financial institutions has been paralleled by an increase in criminal activity utilizing these institutions. Petty criminals, members of the underworld, those engaging in "white collar" crime and income tax evaders use, in one way or another, financial institutions in carrying on their affairs. According to law enforcement officials, an effective fight on crime depends in large measure on the maintenance of adequate and appropriate records by financial institutions. H.R. 15073 deals with the problem by requiring the maintenance of records by financial institutions in a manner designed to facilitate criminal, tax and regulatory investigations and proceedings. Administrative agencies are given the flexibility to avoid the imposition of unwarranted and burdensome reporting and recordkeeping requirements. Most of the records required to be maintained under the bill are already kept by most financial institutions, so the regulations should impose almost no additional expense upon those affected.

It should be borne in mind that records to be maintained pursuant to the regulations of the Secretary of the Treasury will not be made automatically available for law enforcement purposes. They can only be obtained through existing legal process.

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Types of Records To Be Kept

Photocopying of Checks and Identification of Depositors

In recent years a few sizable banks have abolished or limited the practice of photocopying checks, drafts and similar instruments drawn on them and presented to them for payment. This failure to maintain photocopies of checks has frustrated law enforcement personnel in securing evidence necessary to criminal, tax and regulatory investigations and proceedings. Many cases have either been dropped or their conclusion has been long delayed because of the difficulty or impossibility of obtaining photocopies or records of essential checks, drafts or similar instruments. The bill requires photocopying of checks, drafts or similar instruments drawn and presented to a bank for payment. Checks, drafts or similar instruments received by a bank for deposit and collection need only be recorded. The recordkeeping requirements of title I of the bill do not apply to domestic financial transactions involving less than $500.

The photocopying requirements of the bill will not significantly increase the cost to the affected financial institutions. Most banks and other financial institutions already maintain the types of records contemplated by the bill. In addition, the cost of microfilming checks and similar drafts is minimal. It has been estimated that the average cost including labor and equipment for microfilming checks for banks ranges from less than 1½ mils for small-scale operations down to ½ mil or less for large-scale operations. By comparison with a 10 cent per check service charge, the photocopying cost is negligible.

The identification of depositors and those authorized to deal with respect to accounts presents a related law enforcement problem. Most domestic financial institutions clearly identify their customers and such identification is readily available.

However, the identity of persons who actually deal with accounts cannot be ascertained in many cases. For example, a subpoena may produce an accurate record of the activity in an account, but little may be known about the individuals, other than the account holders, who make deposits and withdrawals. In many cases the identity of such individuals provides an important key in the investigation and prosecution of criminal activity. Thus, the bill requires the maintenance of records and evidence of the identity of each individual authorized to act with respect to an account as well as the identity of the account-holder.

Domestic Currency

Criminals deal in money—cash or its equivalent. The deposit and withdrawal of large amounts of currency or its equivalent (monetary instruments) under unusual circumstances may betray a criminal activity. The money in many of these transactions may represent anything from the proceeds of a lottery racket to money for the bribery of public officials.

Law enforcement agency representatives have strongly urged legislation which would require reports of such transactions by the institution involved as well as the individuals concerned. Reports along this line have been required by Treasury Department regulations for a number of years (31 CFR 102). These regulations were issued under the Trading with the Enemy Act (31 U.S.C. 427). H.R.

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15073 requires reports of cash transactions involving such amounts, or taking place under such circumstances, as the Secretary of the Treasury shall be regulation prescribe. These reports must be signed both by the domestic financial institution involved and by one or more of the other parties thereto. These reports may be of considerable value to law enforcement agencies in criminal investigations and prosecutions.

Foreign Transactions

Considerable testimony was received by the Committee from the Justice Department, the United States Attorney for the Southern District of New York, the Treasury Department, the Internal Revenue Service, the Securities and Exchange Commission, the Defense Department and the Agency for International Development about serious and widespread use of foreign financial facilities located in secrecy jurisdictions for the purpose of violating American law. Secret foreign bank accounts and secret foreign financial institutions have permitted proliferation of "white collar" crime; have served as the financial underpinning of organized criminal operations in the United States; have been utilized by Americans to evade income taxes, conceal assets illegally and purchase gold; have allowed Americans and others to avoid the law and regulations governing securities and exchanges; have served as essential ingredients in frauds including schemes to defraud the United States; have served as the ultimate depository of black market proceeds from Vietnam; have served as a source of questionable financing for conglomerate and other corporate stock acquisitions, mergers and takeovers; have covered conspiracies to steal from U.S. defense and foreign aid funds; and have served as the cleansing agent for "hot" or illegally obtained monies.

Case after case illustrating the foregoing were brought before the Committee. Many of the cases have been in the investigative stage for years. United States law enforcement agencies are often delayed or totally frustrated when wrongdoers cloak their activities in the shield of foreign financial secrecy.

The debilitating effects of the use of these secret institutions on Americans and the American economy are vast. It has been estimated that hundreds of millions in tax revenues have been lost. Unwarranted and unwanted credit is being pumped into our markets. There have been some cases of corporation directors, officers and employees who, through deceit and violation of law, enriched themselves or endangered the financial soundness of their companies to the detriment of their stockholders. Criminals engaged in illegal gambling, skimming, and narcotics traffic are operating their financial affairs with an impunity that approaches statutory exemption.

When law enforcement personnel are confronted with the secret foreign bank account or the secret financial institution they are placed in an impossible position. In order to receive evidence and testimony regarding activities in the secrecy jurisdiction they must subject themselves to a time consuming and ofttimes fruitless foreign legal process. Even when procedural obstacles are overcome, the foreign jurisdictions rigidly enforce their secrecy laws against their own domestic institutions and employees.

One of the most damaging effects of an American's use of secret foreign financial facilities is its undermining of the fairness of our

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tax laws. Secret foreign financial facilities, particularly in Switzerland, are available only to the wealthy. To open a secret Swiss account normally requires a substantial deposit, but such an account offers a convenient means of evading U.S. taxes. In these days when the citizens of this country are crying out for tax reform and relief, it is grossly unfair to leave the secret foreign bank account open as a convenient avenue of tax evasion. The former U.S. Attorney for the Southern District of New York has characterized the secret foreign bank account as the largest single tax loophole permitted by American law.

In devising legislation to repair this huge gap in law enforcement, your committee considered it of high importance not to unduly interfere with the domestic law of any other nation, not to create obstacles to the free flow of legitimate international trade and commerce. Thus, the legislation was directed toward Americans and those doing business in the United States, and the administrative agency selected, the Treasury Department, was given wide flexibility to assure the uninterrupted flow of international commerce and trade.

Most of the knowledgeable witnesses before the Committee urged that the legislation be directed toward Americans and those subject to United States jurisdictions in order to avoid claims of undue interference with foreign law. This comports with the Committee's general purpose—to put an American or person doing business in the United States in the same position with regard to his secret foreign transactions as he would be if he were dealing with a domestic United States institution.

Hence, the bill requires that any resident or citizen of the United States or person doing business therein who engages in any transaction or maintains any relationship with a foreign financial agency to maintain records or to file reports setting forth pertinent information. Again, it must be emphasized that the records required to be maintained are accessible only through legal process.

Obviously, the Secretary could impose recordkeeping and reporting requirements which would create a substantial and harmful burden on the free flow of legitimate international commerce or could result in a requirement of much valueless paperwork, but your committee has every confidence that he will not, especially in view of his broad powers of exemption.

Exports of Monetary Instruments

The bill imposes no legal limitation on the export of U.S. currency from the United States to foreign jurisdictions. Those leaving the United States have always been free to take with them such amounts of cash or other forms of money as they choose. For years American criminal elements have been taking or sending currency out of the United States either in furtherance of a criminal activity or for deposit in a secret foreign haven. The money may come from criminal activities, skim money from gambling operations and the like. Moreover, many Americans have used couriers to send money to foreign jurisdictions with secrecy laws for the purpose of evading taxes and otherwise hiding assets. There is a courier or "hand payment" system which provides this service for fees ranging from 2 per cent to 5 per cent of the funds carried out. The reporting procedure required by the bill will close a serious investigative loophole.

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Margin Requirements

Foreign investment in the American market has assumed vast proportions. In 1968, foreign purchases of U.S. corporate stock totaled $13 billion with a net investment of approximately $2.3 billion. It is estimated that in 1969 such stock purchases were more than $9 billion with a net investment of approximately $1 billion. In addition, over $2 billion worth of securities were issued in 1969 by subsidiaries of American corporations in Eurodollar financing. Since the enactment of Public Law 90–439 in 1968 requiring the disclosure of information with regard to certain stock acquisitions, there have been 91 cash tender offer filings, 13 of which involved foreign financing. A substantial part of this foreign-based investment comes from jurisdictions with financial secrecy laws.

According to the Securities and Exchange Commission, this growth of foreign investment has given rise to a number of questionable practices. Americans and others, using the facade of secret foreign banks, can purchase securities in our market ignoring the Federal Reserve Board's regulations on margin requirements and for the purpose of evading income taxes. American companies are subject to takeovers or the acquisition of substantial interests by those about whom little or nothing is known. Criminal elements infiltrate and control substantial segments of American businesses through securities purchases and financing by secret foreign sources. Several of the recent corporate takeovers and acquisitions have involved security considerations in that defense contractors or other sensitive American industries became the target.

When foreign financial secrecy is imposed upon the natural complexity of some of these transactions, it is virtually impossible for the Securities and Exchange Commission to know whether any laws are being violated. Moreover, the Securities Exchange Act of 1934 is primarily a disclosure act and with foreign financial secrecy, there can be no full disclosure. This legislation will remedy much of this problem by extending the applicability of margin requirements under section 7 of the Securities Exchange Act to the purchasers of stock as well as to broker-dealers and financial institutions who lend money for that purpose.

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SECTION-BY-SECTION EXPLANATION OF PURPOSES AND LEGAL EFFECT OF THE BILL

Bank Recordkeeping

The first section of the bill (section 101, beginning at line 3 of page 2) amends the Federal Deposit Insurance Act by adding a new section 21 which imposes certain recordkeeping requirements on all insured banks. Before discussing the purpose and nature of these requirements, the reason for incorporating them into the Federal Deposit Insurance Act should be explained.

Section 8 of the Federal Deposit Insurance Act sets up a comprehensive procedure for the enforcement of certain types of legal requirements imposed on insured banks. Moreover, such banks are in all cases examined by a Federal bank supervisory agency. Part of the purpose of the examination, again, is to insure compliance with applicable law. The recordkeeping requirements of this bill have been incorporated into the Federal Deposit Insurance Act first, to make clear that the Federal examiners and supervisory agencies are responsible for enforcing compliance, and second, to make clear that the enforcement machinery set up in section 8 of the Federal Deposit Insurance Act will be available to those agencies if needed.

Congressional Findings

> Section 21(a)(1) sets forth the finding by Congress—that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that photocopies made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

The foregoing findings appear to be amply supported by the record of hearings before your committee. As introduced, H.R. 15073 would have required the photocopying of all checks by the bank on which drawn. This requirement was very plainly set forth in a number of preliminary drafts which were submitted to both the Department of the Treasury and the Department of Justice. In some of the earlier drafts, the photocopying requirement extended to checks deposited as well as those finally paid or returned by the drawee bank. At the suggestion of the Treasury Department, the final version of the bill as introduced included only a requirement of photocopying by the drawee bank.

The Department of Justice unequivocally supported the bill as introduced. The reasons are obvious. The cost is minimal, ranging from 1½ down to ½ mil per check. Moreover, even this minimal cost would not ordinarily represent a *net* cost to the bank, since most banks already photocopy all such items.

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The importance of photocopies of checks to effective law enforcement, especially where white-collar crimes are concerned, simply cannot be overestimated. The recipient of a direct or indirect bribe, for example, will make no record of his receipt of the money, and the person who wrote the check will take pains to see that it is totally destroyed after cancellation. In many instances, payments by check which are not necessarily illegal in and of themselves may constitute the only way that the prosecution can establish the existence of a relationship or pattern of conduct which may be essential to making its case.

Finally, the maintenance of check photocopy records by banks raises no constitutional issues and poses no threat to individual liberty. As has been pointed out, banks have wide experience with maintaining these records, and the banking industry has a creditable record of maintaining their confidentiality. There is nothing in this bill which would make such records any more accessible to law enforcement officers, much less anyone else, than they now are. At a time when other agencies of the Government are engaged in strenuous efforts to fashion new weapons in the war on crime, it would be most surprising if informed and responsible elements of the banking community were to oppose the retention of check photocopying, a law enforcement aid of minimal cost, proven value, and undoubted constitutionality.

STATEMENT OF PURPOSE

Section 21(a)(2) states—

> It is the purpose of this section to require the maintenance of appropriate types of records by insured banks where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Read in conjunction with the findings set forth in section 21(a)(1) and the requirement in section 21(b) that the Secretary "shall prescribe regulations to carry out the purposes of this section," this statement of purpose leaves the Secretary little choice but to require, upon the effective date of the legislation, that banks photocopy all checks except for those exempt under subsection (i), discussed below.

It should be made clear, however, that the Secretary's duty to impose such a requirement is neither absolute nor permanent. The actual photocopying requirement, as set forth in section 21(d)(1), is that each insured bank "shall make, *to the extent that the regulations of the Secretary so require*, a photocopy or other copy of each check, draft, or similar instrument drawn on it and presented to it for payment [emphasis supplied]." Likewise, section 21(f) provides that "in addition to *or in lieu of* the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section [emphasis supplied]."

In other words, if the Secretary finds that other kinds of records of demand deposit activity would be just as useful or more useful from a law enforcement standpoint, he would be legally empowered to make appropriate changes in the regulations.

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EXCLUSIONS OF DOMESTIC TRANSACTIONS LESS THAN $500

The committee adopted an amendment adding a new subsection (i) to section 21 as follows:

> (i) Notwithstanding any other provision of this section the recordkeeping requirements referred to in this section shall not apply to domestic financial transactions involving less than $500.

This amendment would appear to be of interest primarily to those banks which are so small that they conduct all their bookkeeping operations manually. There is no way to tell whether any given check has cleared through a foreign bank except by a careful inspection of the endorsements. It is far cheaper to make a photocopy than it is to make such an inspection.

THE "KNOW YOUR CUSTOMER" PROVISION

Section 21(c) reads as follows:

> (c) Each insured bank shall maintain such records and other evidence as the Secretary shall require of the identity of each person having an account with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account.

Most banks, for their own protection, already make some check on the identity of their customers. This provision of the bill would require the Secretary to set minimum standards in this regard. These would in no way preclude any bank from going beyond the minimum requirements. These records would, of course, be confidential.

RELATIONSHIP TO TITLE II

Section 21(e) makes a cross reference to title II of the bill, which has the short title of the Currency and Foreign Transactions Reporting Act. Section 21(e) provides that where an individual engages in a transaction with an insured bank which is required to be reported or recorded under that Act, the bank must require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances. Here, again, the bill prescribes no more than what most bankers would regard as prudent practice. Law enforcement officials have, however, encountered difficulties as a result of the lax practices of some institutions, and this provision of the bill is designed to remedy this condition.

RECORDS OF CHECKS RECEIVED

Section 21(d)(2) requires each insured bank to "make, to the extent that the regulations of the Secretary so require, a record of each check, draft, or similar instrument received by it for deposit or collection. . . ." It is contemplated that normally, all that would be required under this provision is the deposit slip. However, the Secretary could require photocopying of checks received under certain circumstances, as for example in cash letters from foreign countries.

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Conservative Approach of Section 21

Although section 21 provides reasonable latitude for the exercise of administrative discretion, as well as the flexibility to adjust to changing conditions, its basic thrust is simple and easy to understand. It provides that insured banks shall make and retain adequate records of deposit account activity, in particular, photocopies of checks, a type of record which has already been proven to be of great value in law enforcement. Beyond that, it enjoins upon banks the requirement that they maintain prudent practices in identifying those with whom they deal. By no stretch of the imagination can any of these requirements be considered novel, far reaching, or onerous. On the contrary, they are traditional, conservative, and economical.

Your committee considered and rejected an alternative proposal to grant the Treasury an almost unlimited administrative authority to require banks to keep any type of records determined by the Secretary to be "likely to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." It would not even be necessary for the Secretary to determine that any new recordkeeping requirements he might impose had been shown to be of value in cases where they had been kept voluntarily. All he need make is his own determination that the records would be *likely* to have a high degree of usefulness for the stated purposes.

It was never made clear exactly how the authority would be used, but there were suggestions of selective requirements. The whole concept of selective recordkeeping requirements raises disturbing questions. How much discretion would be confided to the financial institution? Would it be obligated to tell a customer when his transactions were of such a nature as to call into play special recordkeeping requirements? A majority of your committee was of the opinion that with such questions scarcely raised, much less answered, by the Treasury testimony, it would be tantamount to an abdication of legislative responsibility to grant to the Treasury such sweeping administrative authority.

Insured Institutions

Section 102 of the bill adds a new section 411 to title IV of the National Housing Act. This section provides as follows:

> Sec. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks.

The "insured institutions" referred to above are savings and loan associations insured by the Federal Savings and Loan Insurance Corporation. The recordkeeping requirements with respect to demand deposit account activity would have little or no application to such institutions, as they do not offer demand deposit services. To the extent, however, that such services might be or become available, they should be covered. Also, records of the identity of customers of these institutions are desirable to virtually the same extent as records of the identity of bank customers.

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Other Financial Institutions

As introduced, chapter 2 of title I of the bill dealt only with uninsured banks, that is, banks not insured by the Federal Deposit Insurance Corporation. At the request of the Treasury, coverage of the chapter was broadened to make it apply to any business which supplies a means for transferring or transmitting funds or credits domestically or internationally. Included would be issuers of travelers checks and operators of credit card systems. The specific functions are set forth at page 8 of the bill, lines 1 through 13. The bill also imposes on uninsured banks and uninsured institutions a requirement to report changes in ownership, control, or management to the Treasury. This is similar to the requirement already imposed under existing law on insured banks by section 7(j) of the Federal Deposit Insurance Act.

Administration and Enforcement

No specific provision is made in the bill for the enforcement of its requirements with respect to insured banks and insured institutions. This is because the necessary legal and administrative machinery is already in existence. Such is not the case, however, with respect to other institutions. For that reason, chapter 2 contains such provisions. Section 124 authorizes injunctive relief, and section 125 permits the imposition of a civil penalty not exceeding $1,000 for each violation.

Procedure for Recovery for Civil Penalty

The civil penalty provisions in sections 125 and 207 of the bill, as well as the forfeiture provision in section 232 would all be governed by chapter 163 (sections 2461 through 2465) of title 28, United States Code. These provisions established a five-year statute of limitations, put the burden of proof on the Government, and require proof by a preponderance of the evidence. This burden is less strict than the "beyond a reasonable doubt" test applied in criminal actions.

Criminal Penalties

Section 126 makes violation of any regulation of the Secretary a misdemeanor punishable by a fine not exceeding $1,000 or imprisonment for not more than one year. Section 127 provides that where a violation is knowingly committed in furtherance of the commission of a Federal felony, it is punishable by a fine of $10,000 or imprisonment for not more than five years.

Title II—Reports of Currency and Foreign Transactions

The principal purpose of title II of the bill is to furnish American law enforcement authorities with the tools necessary to cope with the problems created by so called secrecy jurisdictions. Some of these jurisdictions simply do not recognize cheating on taxes, violations of securities laws, and many other acts as criminal. Neither their law enforcement authorities nor their banking institutions will afford the slightest cooperation to American authorities. It is not feasible and it is not the purpose of this bill to attempt to apply American law in foreign countries. But it is feasible, and it is the purpose of the

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bill, to authorize the imposition of recordkeeping and reporting requirements on those in the United States who deal with foreign financial agencies.

Title II is divided into four chapters. The most important of these is chapter 4, which authorizes recordkeeping and reporting requirements with respect to relationships and transactions with foreign financial agencies. Chapter 2 provides a clear statutory basis for the type of reporting requirements which the Treasury has already imposed under the Trading With the Enemy Act with respect to domestic currency transactions. Chapter 3 requires reports of exports and imports of monetary instruments, and chapter 1 sets out the general provisions applicable to the entire title.

Sec. 201. Short title

The short title of this title is the Currency and Foreign Transactions Reporting Act.

Sec. 202. Purposes

The purposes of title II are intentionally stated in much broader terms than those of title I. They are (1) to facilitate the supervision of financial institutions properly subject to Federal supervision, (2) to aid duly constituted authorities in lawful investigations, and (3) to provide for the collection of statistics necessary for the formulation of monetary and economic policy.

Sec. 203. Definitions and rules of construction

These are generally self-explanatory and appear in the bill beginning at line 14 of page 10.

Sec. 204. Regulations

This section authorizes the Secretary to prescribe such regulations as he may deem appropriate to carry out the purposes of the title.

Sec. 205. Compliance procedures

This section authorizes the Secretary to require any class of domestic financial institutions to maintain appropriate procedures to assure compliance with the requirements imposed under the title. This section is of vital importance. In most instances of noncompliance, it would be difficult or impossible to show a willful intent to violate the law or regulations, but mere isolated lapses ought not ordinarily be the occasion for the imposition of heavy penalties. On the other hand, where a financial institution fails to properly train or supervise its employees, recurrent violations can be expected. This section attacks the problem directly and in a way which is more likely to be fair and effective than the imposition of civil or criminal penalties for particular violations.

Sec. 206. Exemptions

This section confers on the Secretary an exemptive power. The practical effect of this section, coupled with the structure of the provisions conferring regulatory authority, is that a regulatory scheme can be fashioned which is as broad or as narrow, as general or as selective, as the situation requires. For example, the Secretary might exempt whole classes of financial institutions from the reporting requirements otherwise imposed under chapter 3, but this exemption could be so designed as to be revocable with respect to any particular institution that might appear to be abusing the privilege.

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Sec. 207. Civil penalty

This section authorizes a civil penalty not exceeding $1,000 for willful violations. The availability of relatively modest sanctions is of great importance in assuring compliance with regulations of the type contemplated by this bill. A few years ago, your committee, at the request of the Commerce Department, made civil monetary penalties available for the enforcement of the Export Control Act. When this Act was superseded by the Export Administration Act of 1969, the penalty structure was carried forward without change, and its availability is believed to contribute to the successful administration of the Act. The procedure for the collection of such penalties has been discussed in connection with a similar provision in title I.

Sec. 208. Injunctions

This section authorizes the Secretary to obtain injunctive relief against actual or threatened violations of the Act.

Sec. 209. Criminal penalty

This section makes willful violation a misdemeanor punishable by a fine of up to $1,000 or imprisonment for not more than a year.

Sec. 210. Additional criminal penalty in certain cases

Where a violation is knowingly committed in furtherance of the commission of any other violation of Federal law or as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve month period, the violation is made a felony punishable by a fine not exceeding $500,000 or imprisonment for not more than five years. It should be noted that serious violations under this title may involve very large sums of money, and fines of as much as $10,000 or more might be shrugged off as a mere cost of doing business. To have any real deterrent effect, the potential fine must be large enough to have some real economic impact on potential violators.

Sec. 211. Immunity of witnesses

This section authorizes the granting of immunity from prosecution to a witness who claims the Fifth Amendment privilege against self-incrimination. It is traditional in structure, both procedurally and substantively. The immunity is granted by the court upon the application of the district attorney with the approval of the Attorney General. Substantively, the immunity covers "any transaction, matter, or thing concerning which he is compelled . . . to testify or produce evidence". Such a provision is particularly important in connection with legislation such as this, where there may be a heavy involvement of organized crime or at least cooperation if not conspiracy on the part of a number of persons. The power to grant immunity from prosecution under these circumstances can be a crucial factor in unravelling a pattern of criminal activity.

It was suggested to your committee that this provision be dropped from the bill on the grounds that the same subject matter is covered in S. 30, the Organized Crime Control Act of 1969, which has passed the Senate and is now pending before the House of Representatives.

Several observations are in order. First and most obvious, there can be no certainty that S. 30 will pass, or that if passed, the immunity provisions will remain in the final version. Second, and perhaps even more importantly, the immunity provisions of S. 30 are constructed on the basis of a constitutional theory which has yet to be put to a

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definitive test in the Supreme Court. The witness is not granted immunity from prosecution. Rather, it is provided that neither the testimony he is compelled to give, nor any "evidence or other information which is obtained by the exploitation of such testimony" may be used against him in any criminal case. Such an immunity arguably meets the literal requirements of the Fifth Amendment, but it cannot be said with assurance that the Supreme Court will hold that the immunity under this approach is coextensive with the privilege as that Court has heretofore interpreted it. If the immunity provisions of S. 30 are enacted and upheld, the enactment of section 211 of this bill would do no harm. If, on the other hand, the immunity provisions of S. 30 do not become and remain effective, then the absence of section 211 would constitute a serious handicap to law enforcement.

Chapter 2—Domestic Currency Transactions

Sec. 221. Reports of currency transactions required

This section requires that transaction with any domestic financial institution involving the payment, receipt, or transfer of monetary instruments be reported in accordance with the regulations of the Secretary if they are in such amounts, denominations, or both, were under such circumstances, as he shall by regulation prescribe. As introduced, the bill covered only United States currency, that is, paper currency such as Federal Reserve notes and United States notes. At the suggestion of the Treasury, the provisions were broadened to cover monetary instruments, which is a defined term theoretically reaching as far as personal checks. It is not the intention of your committee, however, that this broadened authority be expanded any further than necessary to cover those types of bearer instruments which may substitute for currency.

Sec. 222. Persons required to file reports

The bill requires that reports be filed both by the financial institution involved and by one or more of the other parties to or participants in the transaction, as the Secretary may require. The purpose of this is twofold. First, it permits the prosecution of a person who supplies false information for such a report and signs it. Secondly, it relieves the institution of any pressure the Secretary of the Treasury might otherwise be inclined to exert to require it to submit reports of this type without notifying the customer. The latter procedure raises serious questions in respect of the fiduciary duty of financial institutions to their customers, not to mention the right of privacy or simple fairness.

Sec. 223. Reporting procedure

This section permits the reports to be filed through the financial institutions involved.

Chapter 3—Reports of Exports and Imports of Monetary Instruments

Sec. 231. Reports required

This section requires reports of transportation of currency or its equivalent into or out of the United States by any person in an amount exceeding $5,000 on any one occasion or in an aggregate

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amount exceeding $10,000 in any one calendar year. As previously noted, the Secretary has ample authority under section 206 to limit the reporting requirements to the extent that they will actually be useful in accomplishing one or more of the purposes of the title. The Secretary may require that there be reported the legal capacity in which the person filing the report is acting, the route by which the currency is transported, the identities of the real parties in interest, and the amounts and types of monetary instruments transported.

Sec. 232. Forfeiture

Under this section, monetary instruments may be forfeited to the United States if a required report is not filed.

Sec. 233. Civil liability

This section imposes a civil liability for unreported transportation of monetary instruments in an amount not exceeding their value, less any amount actually forfeited under the preceding section.

Sec. 234. Remission by the Secretary

This section allows the Secretary to remit any forfeiture or penalty under this chapter. In the absence of such a provision, the Secretary would be unable to correct an injustice if evidence came to light that a penalty which had been paid had been unjustly imposed.

Chapter 4—Foreign Transactions

Sec. 241. Records and reports required

This section directs the Secretary of the Treasury to require "any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship with a foreign financial agency to maintain records or to file reports, or both, containing such of the types of information specified in the section as the Secretary may require." The information which may be required is limited to the following:

> (1) The identities and addresses of the parties to the transaction or relationship.
>
> (2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.
>
> (3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

It should be noted that the Secretary has ample authority to limit recordkeeping and reporting requirements to those which will be useful to carry out the purposes of the Act and not unduly burdensome to legitimate business. The initial implementation of this chapter may very possibly be limited to a requirement that those under a duty to file Federal income tax returns include in the return information as to the existence of any relationship which the taxpayer has with a foreign financial agency.

The Treasury announced to your committee that it intended to impose such a requirement with respect to returns filed in 1971 and thereafter. The Treasury failed, however, to cite any legal authority

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in the Secretary for the imposition of any such requirement. The enactment of chapter 4 would remedy this deficiency by clearly providing such authority.

Sec. 242. Classification and requirements

This section clarifies the authority of the Secretary to make any reporting or recordkeeping requirements under this chapter as broad or as narrow as conditions may require.

Title III—Margin Requirements

Title III of the bill amends section 7 of the Securities Exchange Act of 1934. That section confers on the Federal Reserve Board its authority to regulate the extension of credit collateralized by securities. This is an extremely important power, and its effective exercise has a major bearing on the stability of our securities markets and the administration of many of our most important securities laws.

The bill does not in any way change the applicability of the Securities Exchange Act of 1934 with respect to foreign transactions. There is no intention, and there is nothing in the bill remotely suggestive of an intention, to supersede or circumvent the customary principles circumscribing the applicability of any statute to the territorial and special jurisdiction of the sovereign authority under which it is enacted.

As presently in effect, however, it is unclear whether the authority of the Federal Reserve Board under section 7 extends to borrowers as well as lenders. The significance of this question is obvious. The infusion of unregulated foreign credit into American securities markets can have a perniciously destabilizing effect on the market as a whole. In particular instances, its easy availability may tempt the management of a company to embark on a speculative takeover operation whose outcome leaves the American shareholder with an empty corporate shell and the foreign creditor in control of the real assets.

Part of the reason why section 7 was originally enacted in its present form may have been a concern over putting the small investor at risk as to whether his broker or lender was complying with the regulations. The amendment has been carefully drawn to avoid this result. Although the Board is given clear authority to prescribe regulations applicable to borrowers, any borrower of less than $1 million would not be criminally liable unless he obtained the credit by a false representation with respect to its purpose, or acted with actual knowledge that the credit was in violation of the regulations. As to those borrowing sums in excess of $1 million, it seems fair to charge them with the same legal responsibility to know and act in compliance with the law that is imposed with respect to most legal requirements applicable to business generally.

The provision of the bill conferring authority on the Board to regulate borrowing is contained in a separate sentence from that which confers the authority to regulate lending. This is not a mandate for separate sets of regulations, but it is intended to make clear the authority of the Board to reflect differences in size, expertise, or other circumstances which may exist among various classes of borrowers and lenders. The percentage requirements would presumably remain the same regardless of whether any given transaction is viewed from

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the perspective of the borrower or the lender. The Board should, however, have the administrative flexibility to fashion requirements and conditions with which compliance can reasonably be expected as well as practicably be enforced.

Title IV—Effective Dates

This title provides that the other provisions of the bill will take effect on the first day of the seventh month beginning after the date of enactment, but allows the Treasury, with respect to titles I and II, and the Federal Reserve Board, with respect to title III, to postpone or advance the effective date by as much as six months.

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CHANGES IN TEXT OF EXISTING STATUTES

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the text of existing Federal statutes or parts thereof which the bill, as reported, would amend or repeal is printed below, with the proposed changes shown (*a*) by enclosing in black brackets material to be omitted, (*b*) by printing the new matter in italic type, and (*c*) by printing in roman type those provisions in which no change is to be made.

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 21. (*a*)(*1*) *The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that photocopies made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.*

(*2*) *It is the purpose of this section to require the maintenance of appropriate types of records by insured banks where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.*

(*b*) *The Secretary of the Treasury (referred to in this section as the "Secretary") shall prescribe regulations to carry out the purposes of this section.*

(*c*) *Each insured bank shall maintain such records and other evidence as the Secretary shall require of the identity of each person having an account with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account.*

(*d*) *Each insured bank shall make, to the extent that the regulations of the Secretary so require,*

(*1*) *a photocopy or other copy of each check, draft, or similar instrument drawn on it and presented to it for payment.*

(*2*) *a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).*

(*e*) *Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.*

(*f*) *In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.*

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(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question.

(h) The Secretary shall make an annual report to the Congress of his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) Notwithstanding any other provisions of this section the recordkeeping requirements referred to in this section shall not apply to domestic financial transactions involving less than $500.

SEC. [21] *22.* * * *

SEC. [22] *23.* * * *

TITLE IV OF THE NATIONAL HOUSING ACT

TITLE IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

* * * * * * *

SEC. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks.

SECURITIES EXCHANGE ACT OF 1934

* * * * * * *

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

MARGIN REQUIREMENTS

SEC. 7. (a) [For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security).] *For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall from time to time prescribe rules and regulations in accordance with this section. The Board shall prescribe rules and regulations with respect to the amount of credit (regardless of who or where the lender may be) that any person may initially obtain and subsequently retain on any security (other than an exempted security). The Board shall prescribe rules and regulations with respect to the amount of credit (regardless of who or where the borrower may be) that any person may initially extend and subsequently maintain on any security (other than an exempted security). It shall be unlawful for any person to obtain or retain credit in willful and knowing violation of any rule or regulation under this section. It shall be unlawful for any person to obtain or retain credit in violation, whether or not willful or knowing, of any rule or regulation under this section either on the basis of a material misrepresentation*

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made or participated in by him of the purpose for which the credit is to be used, or in an aggregate amount exceeding $1,000,000 at any one time. For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

(1) 55 per centum of the current market price of the security, or

(2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of under-margined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

(2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extensions or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection.

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(d) It shall be unlawful for any person not subject to subsection (c) to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Federal Reserve Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

(e) The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to the enactment of this title or to the maintenance renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

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ADDITIONAL VIEWS OF THE HONORABLE J. WILLIAM STANTON

It is obvious from a comparison of the bill we are reporting out and the bill as introduced that considerable progress and improvement have been made, largely as a result of the views expressed by the Treasury Department in its testimony of March 2, 1970, and of informal exchanges with the Treasury staff.

Nevertheless, the Committee has failed to adopt a number of desirable suggestions made by the Treasury which are needed to assure adequate authority in the Treasury to carry out the purposes of the bill and to limit the scope of the bill to its intended purpose—to assist criminal, tax, and regulatory investigations and proceedings. I believe that such amendments should be made before the bill is finally enacted.

J. WILLIAM STANTON.

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ADDITIONAL VIEWS OF THE HONORABLE WRIGHT PATMAN

The bill as reported has one serious flaw. An amendment adopted in committee, section 21(i), exempts domestic financial transactions which involve less than $500 from the recordkeeping requirements. In practical terms the amendment means that no photocopies or other records of domestic checks under $500 need be maintained.

This amendment is unwise and could operate as a serious roadblock to the legislative purpose of improving criminal, tax, and regulatory investigations and proceedings.

Those who supported this amendment in committee had no intention of relaxing law enforcement or creating loopholes. Their general motivation was undoubtedly to relieve smaller banks who do not have the photocopying equipment of any expense.

Cost is not a significant factor in microfilming of checks. Uncontroverted testimony from two of the largest manufacturers of such equipment and from trade associations representing all of the major manufacturers shows that cost of photocopying of checks, including labor and equipment, ranges from less than 1½ mils per check for small bank operations down to ½ mil or less for large bank operations. the intended savings are negligible. These microfilming costs should be borne willingly by the banking community as part of their civic responsibility to combat crime. The effectiveness of this bill in reducing the magnitude of the drain placed on our resources by criminal activity could well result in substantial savings to insured banks.

The damage done by this amendment could be brutal. Many cases involving thousands of dollars have been made on the basis of single checks for small amounts. One income tax case involving thousands of dollars was successfully prosecuted based on the photocopy of a check for less than $5.

The range of the use of checks under $500 by criminal elements is limitless. Graft, corruption and payoffs are many times in such amounts. It is not inconceivable that criminals will adopt the $499.99 check as their standard monetary instrument. There is no limit to the number of checks a single individual can negotiate.

The amendment also weakens the recordkeeping requirements for foreign transactions. In order to discover whether a particular check involves the type of foreign transaction covered by the bill its endorsements must be examined. There is no better record of the endorsements than a microfilm copy. Manual examination of endorsements by the large banks which do a heavy foreign business will increase their costs 20 times over microfilming.

Finally, the high sophistication of modern photocopying equipment makes it cheaper for a bank to photocopy all checks rather than less than all.

The amendment should be defeated.

WRIGHT PATMAN, *Chairman.*

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